

# **EXHIBIT 38**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

COPART, INC.,

Plaintiff,

vs.

No. C 07 02684 CW

CRUM & FORSTER INDEMNITY COMPANY,  
UNITED STATES FIRE INSURANCE COMPANY,  
and DOES 1-10,

Defendants.

CERTIFIED  
COPY

AND RELATED COUNTERCLAIMS.

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DEPOSITION OF RICHARD KRUSE

San Francisco, California

Friday, June 27, 2008

Reported by:

KELLI COMBS

CSR No. 7705

Job No. 91148

RICHARD KRUSE

06/27/08

1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF CALIFORNIA  
3                   OAKLAND DIVISION

4 COPART, INC.,

5                   Plaintiff,

6                   vs.

No. C 07 02684 CW

7 CRUM & FORSTER INDEMNITY COMPANY,  
8 UNITED STATES FIRE INSURANCE COMPANY,  
and DOES 1-10,

9                   Defendants.

10  
11 AND RELATED COUNTERCLAIMS.

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14  
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16  
17                  Deposition of RICHARD KRUSE, taken on behalf of  
18 Defendant at 650 California Street, Suite 1800, San  
19 Francisco, California, beginning at 1:02 p.m. and ending  
20 at 1:53 p.m. on Friday, June 27, 2008, before Kelli  
21 Combs, CSR 7705.

22

23

24

25

RICHARD KRUSE

06/27/08

1 APPEARANCE OF COUNSEL:

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3 FOR PLAINTIFF:

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13 FOR DEFENDANTS:

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BULLIVANT HOUSER & BAILEY, PC  
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RICHARD KRUSE

06/27/08

1 San Francisco, California, Friday, June 27, 2008

2 1:02 p.m. - 1:53 p.m.

3 RICHARD KRUSE,

4 after having been duly sworn, testified as follows:

5

6

7 EXAMINATION

8 BY MR. RUBY:

9 Q Good afternoon, sir.

10 Could you state your name for the record,  
11 please?

12 A Richard Kruse.

13 Q Mr. Kruse, are you currently employed with  
14 Copart, Inc.?

15 A Yes, I am.

16 Q What is your position?

17 A Vice-president of operations.

18 Q How long have you held that position?

19 A Approximately two years.

20 Q Were you employed with Copart prior to  
21 becoming vice-president of operations?

22 A Yes, I was.

23 Q Okay.

24 When did you start working for Copart?

25 A October of '98. It will be ten years this

1       October.

2           Q     When you started with Copart, what was your  
3     initial title or position?

4           A     I was a general manager of the Atlanta,  
5     Georgia facility.

6           Q     Did that facility have a yard number?

7           A     15.

8           Q     What was your next position after being the  
9     general manager of Yard 15?

10          A     I became regional manager of the southeast  
11     region.

12          Q     When did you receive that promotion?

13          A     Not quite sure. I couldn't tell you exactly.  
14     Approximately two years after I started with the  
15     company.

16          Q     And between being a regional manager of the  
17     southeast region and being vice-president of operations,  
18     have you held any other positions?

19          A     Yes, I have. Assistant vice-president of  
20     operations.

21          Q     When did you receive that position?

22          A     June 1st of 2004.

23          Q     When did you become vice-president of  
24     operations?

25          A     Approximately two years ago. I don't remember

1 general manager to regional manager to assistant V.P.?

2 A Yes.

3 Q And I take it assistant V.P. then reports to  
4 the V.P.?

5 A There is no assistant V.P. anymore. I was  
6 promoted to V.P. and that position has not been filled.

7 Q Now, to whom do you report?

8 A Gentleman by the name of Russ Lowy, L-O-W-Y.

9 Q What is his title?

10 A His current title is senior vice-president,  
11 COO of Copart, Inc.

12 Q COO, is that --

13 A Chief operating officer, yes.

14 Q All right.

15 We had asked for Copart to produce a witness  
16 to talk about two topics dealing with property known as  
17 Yard 105, and the topics were Topics Number 5 and 10,  
18 which concern Copart's use of Yard 105, both the Miami  
19 and Hialeah property or sides of that property.

20 Are you familiar with Copart's use of Yard  
21 105?

22 A Yes, I am.

23 Q Okay.

24 When you were -- let me back up.

25 Is Yard 105 within the southeast region?

1 A No.

2 Q Okay.

3 What is the region that Yard 105 falls under?

4 A South Florida.

5 Q Did the South Florida regional manager report  
6 to you when you were assistant vice-president of  
7 operations?

8 A Yes, he did.

9 Q Okay.

10 Who was that regional manager?

11 A Gentleman by the name of Dan Hamlin,  
12 H-A-M-L-I-N.

13 Q Who was the first general manager of Yard 105?

14 A Gentleman by the name of Mike Fadehl. I think  
15 it's F-A-D-E-H-L.

16 MS. PURI: Sam, I'm just going to get some  
17 water. I'll be right behind you.

18 BY MR. RUBY:

19 Q All right.

20 How long was Mr. Fadehl the general manager of  
21 Yard 105?

22 A I don't remember what date he left us.

23 Q Could you narrow it down to just a year maybe?

24 A He was into 206. I can't remember the exact  
25 date.

1 Q All right.

2 I want to show you not a great copy,  
3 unfortunately, of a color photograph that was previously  
4 marked as Exhibit 51, which has been identified as  
5 showing part of Yard 105.

6 Have you ever been to Yard 105?

7 A Numerous times.

8 Q Okay.

9 Do you recognize what you see in the photo?

10 A Yes, I do.

11 Q Okay.

12 Did you see Yard 105 before the hurricane  
13 struck?

14 A Yes, I did.

15 Q Now, are you aware of any distinction between  
16 a Miami Dade side of 105 and a Hialeah side?

17 A Yeah. I believe the offices are in one town  
18 and the storage location is in another town  
19 jurisdiction. I get confused on which is which, but for  
20 all intents and purposes it means nothing to us.

21 Q Okay.

22 We've been referring in previous depositions  
23 to the large truck depot building that was struck by the  
24 hurricane and that parcel as being the Miami side.

25 A Okay.

1 Q Then if you look sort of across the tracks  
2 literally toward the yard where the cars are, that would  
3 be the Hialeah side.

4 A Yeah, okay.

5 Q But we also sometimes just call the Hialeah  
6 side "the yard" and the other side "the depot," so  
7 either terminology may creep into this.

8 I want to ask you generally now about how  
9 operations began at Yard 105. I have had another  
10 witness explain the history of the renovation of the  
11 building and the construction of the Hialeah side, so I  
12 won't ask you about construction details or time  
13 lines --

14 A Okay.

15 Q -- but I'm interested in what you might call  
16 occupancy and use.

17 A Okay.

18 Q So can you tell me what was the first sort of  
19 step other than construction towards occupying and using  
20 any part of Yard 105?

21 A The first step would be the installation of  
22 our computer systems and desks and cubicles for the  
23 employees, equipment. We would bring in equipment for  
24 operating on the storage side, loaders, vacuum cleaners,  
25 pressure washers, things like that that we use in our

1 normal, everyday business.

2 Q All right.

3 Do you know when in time the desks and other  
4 furniture were moved into Yard 105?

5 A Memory serves me correctly, it was early July  
6 of 2005 the construction was complete, we were able to  
7 bring in the equipment to make it operate.

8 Q And what about the computers and  
9 telecommunication systems?

10 A Computers were probably sent in early July.  
11 Telecommunications and wiring and stuff is typically  
12 done the weekend we open business, so come in, wired, we  
13 turn the systems on. So that would have been late July.

14 Q What about the equipment used to move or clean  
15 or otherwise handle the cars?

16 A July, it would come in. Sometime during July,  
17 they come in and say -- sometime during July, the  
18 equipment comes in as the manufacturers get it done and  
19 ship it to us. So it would have been over the course of  
20 July.

21 MS. PURI: Just go a little bit slower.

22 THE WITNESS: I'm sorry.

23 BY MR. RUBY:

24 Q When was --

25 When did Copart begin moving inventory onto

1      Yard 105?

2            A      Roughly, the end of July. I'm not sure of the  
3 exact date, but in the late 20s; 28, 29.

4            Q      The initial -- call it stocking of the yard,  
5 was this something that was done more in a trickle or  
6 more in a large initial movement?

7            A      What -- typically, what we do is we turn a  
8 switch on in our computer system that starts sending  
9 cars to closest yard logic.

10           So we would pick an opening date and hit the  
11 switch that weekend, and Monday morning we would start  
12 to receive assignments and the computer system would  
13 automatically assign vehicles to the closest yard  
14 location and other -- based on other things, seller  
15 preferences or something like that.

16           Q      Prior to Yard 105 being ready to receive  
17 inventory, was there any inventory being staged off-site  
18 in anticipation of the opening of Yard 105?

19           A      No, not that I'm aware.

20           Q      So when the inventory started to arrive at  
21 Yard 105, this was after your computer system was  
22 operating?

23           A      Yeah.

24           Q      All right.

25                 Let's look at Exhibit 61. Exhibit 61 was

1           A     Yeah. Kantor is based out of Oakland. They  
2 usually get a third party to do the installs and ship  
3 the equipment, and then once it's all set up and  
4 completed to our satisfaction, we sign off and a PO is  
5 issued.

6           Q     Okay.

7                   So based on the records that we see here  
8 showing Kantor's invoices dated July 31st, 2005, does  
9 that confirm that Kantor had provided its services in  
10 Yard 105 by that time?

11               MS. PURI: Objection; calls for speculation.

12               If you know, you can answer.

13               THE WITNESS: Like I said, I'm not sure  
14 100 percent that Kantor's did it. However, during --  
15 normally, this would be the process.

16 BY MR. RUBY:

17               Q     Okay.

18               And whether it was Kantor's or another vendor,  
19 you're confident that by the end of July, the furniture  
20 was installed at Yard 105?

21               A     Absolutely.

22               Q     Okay.

23               Let me show you now Exhibit 66. This is an  
24 excerpt from Copart's fixed assets master list by  
25 location as of July 31st, 2005. This particular page is

1 Q Okay.

2 Let me show you now Exhibit 40. Exhibit 40  
3 was identified at a previous deposition as a printout  
4 someone had made from Copart's website, and the printout  
5 is dated August 5th, 2005. If you go down to the third  
6 page of the exhibit, you'll see there is a line for Yard  
7 105.

8 Is this part of the website something that  
9 Copart makes available for its clients or customers?

10 MS. PURI: Objection; calls for speculation,  
11 but you can answer.

12 THE WITNESS: Yes.

13 BY MR. RUBY:

14 Q Okay.

15 And what is at least one of the uses that a  
16 client or prospective client can make of this part of  
17 the website?

18 MS. PURI: Same objection.

19 To the extent you know, go ahead.

20 THE WITNESS: To see what locations we have,  
21 where they are, physical addresses to pick up vehicles,  
22 use it to look at our sale list to see exactly what's on  
23 sale.

24 BY MR. RUBY:

25 Q Okay.

1                   Would Copart list on this part of its website  
2                   a facility that was not yet open for business?

3                   A     No, they wouldn't.

4                   Q     Once operations began at Yard 105 at the end  
5                   of July, was there any ramping up over the next couple  
6                   months or was this more or less you turn the lights on  
7                   and --

8                   A     After July or before July?

9                   Q     Well, after you started, was it sort of, you  
10                  know, fully operational at that time or was it only  
11                  partially operational?

12                  A     It's fully operational. We turn a switch on  
13                  and computer reverts cars to that location and we have  
14                  to be ready to take them. We may not have been fully  
15                  staffed or -- but we're taking cars.

16                  Q     All right.

17                  When the computer was turned on that first  
18                  time, what staff did Copart have at Yard 105?

19                  A     I do not know the exact count, but you  
20                  definitely had a general manager and we had some  
21                  transfers over from our other Facility 33. So I know we  
22                  had some basic office staff in place and yard staff in  
23                  place to handle opening day.

24                  Q     Okay.

25                  Can you give me an idea what a basic office

1 staff would consist of?

2 A CSRs, dispatchers, title clerks.

3 Q Would "CSR" be a customer service  
4 representative?

5 A Yes.

6 Q Now, I know you couldn't tell me exactly how  
7 many personnel you had at Yard 105 when it opened, but  
8 could you give me an approximation?

9 A No. I don't remember.

10 Q What would be a minimum number of just office  
11 staff to be able to operate at all at that location?

12 A At Miami, I'd have to figure out what the  
13 average assignments were. Our staffing model is based  
14 on how many cars per day we get.

15 Q Okay.

16 Well, could it be as few as one person working  
17 under the GM?

18 A No. A minimum staffing for any location we  
19 open, from the smallest size, is two yard people, two  
20 office people, and a general manager.

21 Q Okay.

22 Now, the yard people, what would their  
23 functions be?

24 A Their job is to receive the cars, inventory  
25 the cars, prepare them for storage, move them to

1 storage, prepare them for sale, move them from storage  
2 to sale, and load them out to customers.

3 THE WITNESS: Am I going too fast? I'm sorry.

4 BY MR. RUBY:

5 Q When the hurricane struck Yard 105 in October  
6 of 2005, did you become aware of that fairly quickly?

7 A Yes.

8 Q Okay.

9 To your knowledge, had staff evacuated Yard  
10 105 --

11 A Yes.

12 Q Okay.

13 And how many hours or days in advance of the  
14 hurricane, to your recollection?

15 A Don't recall exactly, but if -- the city  
16 officials issue evacuation order or we're not going to  
17 put our employees in harm's way, so we abide by that.

18 Q Now, a moment ago we were talking about the  
19 staffing level when operations began.

20 Can you tell me, even approximately, what the  
21 staffing level was at Yard 105 at the time of the  
22 hurricane?

23 A I don't have the average number of cars. That  
24 would be hard for me to guess at what it is.

25 Q Do you recall if there was a buildup of staff

1       between opening day and the time of the hurricane?

2           A     Opening day and time of the hurricane. Oh,  
3     absolutely, yes.

4           Q     Was any inventory relocated away from Yard 105  
5     in anticipation of the hurricane?

6           A     No.

7           Q     Between opening and the hurricane at Yard 105,  
8     how was business there?

9                   MS. PURI: Objection; vague and ambiguous, but  
10    you can answer.

11                  THE WITNESS: As compared to what? I mean,  
12    you know, again, we open a facility, goes to closest  
13    yard logic. Whatever assignments in that particular  
14    operating area come into that location.

15                  So we open them up and Monday morning they are  
16    rolling in the door, so...

17    BY MR. RUBY:

18           Q     Okay.

19                  What Copart does with these vehicles, I  
20    understand, is they auction them, correct?

21           A     Yes.

22           Q     Okay.

23                  So the end objective of the business is to  
24    sell the vehicles, right?

25           A     Yes.

1 MS. PURI: Sure.

2 (Recess taken at 1:42 p.m.

3 resumed at 1:52 p.m.)

4 BY MR. RUBY:

5 Q Okay.

6 Mr. Kruse, have you been able to ascertain  
7 when it was that Copart first began selling cars at Yard  
8 105?

9 A Yes. The first sale date was 8/29 of 2005.

10 Q So August 29, 2005?

11 A Yes.

12 Q Very good.

13 MR. RUBY: Well, thank you for coming by.

14 Those were my questions.

15 You'll have an opportunity to review the  
16 transcript and make any changes if you feel a word was  
17 mistranscribed or something like that.

18 What we've been doing is we have -- instead of  
19 asking the witness to come and review the transcript,  
20 the witness will review -- counsel will make her copy  
21 available to the witness within 30 days and then the  
22 witness can return to counsel and the court reporter a  
23 signature page and errata sheet and all the other  
24 stipulations and so on and so forth.

25 MS. PURI: That's fine. Thank you.

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby certify:

3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were duly sworn; that a record of the  
7 proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

11 Further, that if the foregoing pertains to  
12 the original transcript of a deposition in a Federal  
13 Case, before completion of the proceedings, review of  
14 the transcript [ ] was [ ] was not requested.

15 I further certify I am neither financially  
16 interested in the action nor a relative or employee  
17 of any attorney or party to this action.

18 IN WITNESS WHEREOF, I have this date  
19 subscribed my name.

20  
21 Dated: JUL 01 2008

22  
23  
24 KELLI COMBS  
CSR No. 7705  
25